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Mary 16, 2013   VIA email attachment

TO: Larry Kelley, Member, Amherst Town Meeting

Town Meeting Warrant Article 43 is legally invalid and will expose the town to a court battle that will likely result in an award of over $5 million in damages against the town.

First, an eminent domain taking for the purpose of blocking a much-needed student housing project is invalid on grounds of bad faith. See, *Pheasant Ridge Associates Limited Partnership v. Town of Burlington*, 399 Mass. 771, 774-780 (1987) (Use of eminent domain "solely to block low or moderate income housing would be improper."). Does anyone seriously believe stopping the project is not the reason Article 43 is on the 2013 Town Meeting warrant? The video on line at http://vimeo.com/66235015, entitled "An Important Message for Residents of Amherst, Massachusetts, from Sanford Lewis," expressly admits that fact. If this warrant article passes Town Meeting, that video and the person speaking on it will be important evidence in the resulting litigation.

Second, with the land's market value established by a $6.5 million formal signed contract price, the proposed $1.2 million authorization for a conservation restriction is insufficient on its face. If Article 43 passes, and results in an eminent domain taking, the land owner (W. D. Cowls, Inc. of North Amherst) will be forced to pursue a court action for damages in the amount of the $5.2 million difference.

If Article 43 passes, the only sure winners will be the lawyers for both sides, who will each earn tens of thousands of dollars in legal fees. As part of the land owner's legal team, I will be one of those lawyers. Nevertheless, I hope Town Meeting will vote down the article.

Very truly yours,

Michael Pill   MP/csh/L1